

The Chairman, Mark Maxwell, called the meeting of the Board of Zoning Appeals to order in Council Chambers, at 7:30 P.M., on Tuesday, April 20, 2004.

PRESENT: Kenneth Courtney
 Christopher Fejes
 Marcia Gies
 Matthew Kovacs
 Mark Maxwell
 Robert Schultz

ABSENT: Michael Hutson

ALSO PRESENT: Mark Stimac, Director of Building & Zoning
 Susan Lancaster, Assistant City Attorney
 Pamela Pasternak, Recording Secretary

ITEM #1 – APPROVAL OF MINUTES – MEETING OF MARCH 16, 2004

Motion by Courtney
Supported by Fejes

MOVED, to approve the minutes of the meeting of March 16, 2004 as written.

Yeas: 6 – Courtney, Fejes, Gies, Kovacs, Maxwell, Schultz
Absent: 1 – Hutson

MOTION TO APPROVE MINUTES OF MARCH 16, 2004 AS WRITTEN CARRIED

Motion by Fejes
Supported by Kovacs

MOVED, to excuse Mr. Hutson from this meeting as he is out of town.

Yeas: 6 – Fejes, Gies, Kovacs, Maxwell, Schultz, Courtney

MOTION TO EXCUSE MR. HUTSON FROM THIS MEETING CARRIED

Mr. Maxwell asked for a discussion regarding the motion made at the meeting of March 16, 2004 as to how to address items that result in a tie vote. Mr. Courtney stated that contrary to his earlier statement, Article #5 of the Board of Zoning Appeals Rules of Procedure, indicate that the Board should make a final determination on each item presented. Mr. Courtney also stated that this Board does have the power to change these Rules of Procedure if they wished. Mr. Maxwell said that the vote, which resulted in a 3-3 tie to approve the request, was interpreted to mean that the motion was denied. Mr. Courtney said that this was according to Robert's Rules of Order, however, the Board of Zoning Appeals Rules of Procedure over rides these Rules of Order.

Mr. Courtney indicated that he was satisfied with the rules as printed and Mr. Maxwell supported this stating that he agreed that a four (4)-vote majority to approve was acceptable.

Ms. Lancaster said that she had researched that the State Statute, City and Village Zoning Enabling Act, which states that this Board has to have a majority vote in order to grant a variance. A motion that is made to grant a variance requires four (4) votes to approve the request, and under State Statute, a tie vote is automatically considered a denial of the request. Any motion made to deny a request, which results in a tie vote is not addressed by the State Statute; and, therefore, it may require a vote to approve the request, and if this vote results in a 3-3 tie, the motion to approve would fail and would indicate a denial. Robert's Rules indicate that a motion to approve, which results in a tie vote would mean that the motion is denied. This second step would offer clarification for Building Department staff as well as the petitioner.

Mr. Maxwell then asked if a motion could be re-introduced if the vote resulted in a 3-3 tie. Ms. Lancaster indicated that according to Robert's Rules of Order, an item could only be heard for reconsideration at the same meeting or the meeting immediately following the meeting where it was first introduced. Ms. Lancaster also reminded the Board that a vote to approve ending in a 3-3 tie is an automatic denial, and reconsideration should be made part of the Rules of Procedure to avoid any further confusion.

Mr. Courtney asked Ms. Lancaster about clarification of Article #5 regarding a tie vote. Ms. Lancaster said that according to State Law, Section 4 under Section MCL 125.585 specifically states that you need a majority vote to decide in favor of the applicant's request. Mr. Courtney then stated that the item in question was denied. Mr. Maxwell agreed with Mr. Courtney.

Mr. Courtney suggested that this item be postponed until the Board gets something in writing, which would clarify any questions Board members would have. Mr. Maxwell stated that he feels that the discussion regarding voting was sufficient, although he thinks a memo would be helpful. Ms. Lancaster apologized and stated that she would have a memo for the next meeting, as well as a copy of Section 4, Section MCL 125.585 of the State Statute for the members.

Mr. Fejes then asked if they should offer the petitioners the opportunity for a full board before their items are addressed. Mr. Courtney and Mr. Maxwell both stated that there was not a guarantee that a full board would be present if their items were postponed. Mr. Stimac said that after discussing this matter with the City Attorney, he has come to the conclusion that a tie vote on a motion to approve would be interpreted as a denial. As such, if there is action on the Board to postpone the item, a motion would have to be made to reconsider hearing the item, and if that motion was carried, another motion would have to be made to postpone the request.

Ms. Lancaster said that under Robert's Rules you could only reconsider the item at the same meeting it was brought up or at the first meeting following the vote. Thereafter you cannot reconsider the item. Mr. Maxwell asked if Item #5 could be heard at this meeting and Ms. Lancaster said that because of the confusion regarding this vote, she thought the Board could hear the request if they desired. Ms. Lancaster also said that a motion and vote to reconsider would be required before the item was heard.

Mr. Fejes also asked if this procedure could be put in writing so that it would be very clear. Mr. Courtney also asked for something in writing because he feels that the Ordinance does not clearly define "reconsideration". Ms. Lancaster said that "reconsideration" is only a word used in Robert's Rules of Order and means that only the vote is up for "reconsideration" and must be done at either the same meeting or the first meeting following.

ITEM #2 – APPROVAL OF ITEM #3 AND ITEM #4

Motion by Kovacs

Supported by Courtney

MOVED, to approve Item #3 and Item #4 in accordance with the suggested resolutions.

Yeas: All – 6

MOTION TO GRANT RENEWALS OF ITEM #3 & ITEM #4 CARRIED

ITEM #3 – RENEWAL REQUESTED. FATHER MICHAIL, ST. MARK COPTIC CHURCH, 3603-3615 LIVERNOIS, for relief to construct a landscaped berm and use existing natural vegetation in lieu of the 4'-6" high masonry wall required along the south property line and relief of the 4'-6" high masonry wall on the north property line.

Mr. Stimac explained that the petitioner is requesting renewal granted by this Board in 1999 to construct a landscaped berm in lieu of the 4'-6" high masonry wall on the south side of their parking lot as part of a new church construction at the rear of the existing site. The Church obtained a Building Permit in August 2000 and the construction is still on going.

The petitioner is also requesting relief granted by this Board to maintain landscaping and natural screening elements in lieu of the 4'-6" high masonry screening wall required adjacent to their existing off-street parking area. A berm to the north and a natural vegetation barrier to the south presently screen this parking. This renewal has been granted on a yearly basis since 1978.

This renewal last appeared before this Board at the meeting of April 2002 and was granted a two (2) year renewal. At this time the berm and landscaping has been installed. Petitioner is before the Board to request an extension of this renewal.

ITEM #3 – con't.

MOVED, to grant Father Michail, 3603-3615 Livernois a three-year (3) renewal of relief to construct a landscaped berm and use existing natural vegetation in lieu of the 4'-6" high masonry wall required along the south property line and relief of the 4'-6" high masonry wall on the north property line.

- Conditions remain the same.
- Construction of the Church is almost complete.

ITEM #4 – RENEWAL REQUESTED. JOSEPH PETRUZZELLO, 6950 ROCHESTER ROAD, for relief of the 4'-6" high masonry screening wall required along a portion of the east and south property lines where parking abuts residential zoned property.

Mr. Stimac explained that the petitioner is requesting relief of the 4'-6" high masonry screening wall required along a portion of the east and south property lines of their site. This wall would separate the P-1 zoning from the residentially zoned property. Relief has been granted on a yearly basis since 1977, primarily due to the fact that the adjacent residential land is undeveloped. This item last appeared before this Board at the meeting of April 2001 and was granted a three (3) year renewal at that time. Conditions remain the same and we have no complaints or objections on file.

MOVED, to grant Joseph Petruzzello, 6950 Rochester Road, a three (3) year renewal of relief of the 4'-6" high masonry screening wall required along a portion of the east and south property lines of their site.

- Conditions remain the same.
- We have no complaints or objections on file.
- Variance is not contrary to public interest.

ITEM #5

Mr. Courtney said that he felt that Item #5 should be postponed until Mr. Hutson returned and also so that the City Attorney's office could draft up the wording required for reconsideration of requests.

Motion by Courtney
Supported by Gies

MOVED, to postpone the request of Mr. Paul Fleck, 2805 Ranieri, for relief of Section 30.10.05 to construct a patio enclosure addition, which would result in a 26' rear yard setback where 40' is required.

- To allow the petitioner the opportunity of a full Board.
- To allow the City Attorney's office to draft up the wording required for reconsideration of requests.

ITEM #5 – con't.

Mr. Fejes stated that Ms. Gies would not be present for the May meeting and a full board would not be present. Mr. Fejes stated that perhaps Ms. Gies could put her vote in writing; however, Mr. Stimac and Ms. Lancaster indicated that there is not a provision in the Ordinance to allow for a write in vote. Mr. Maxwell stated that there was a motion to postpone this request and felt a vote should be taken.

Mr. Courtney withdrew his motion to postpone. Ms. Gies also withdrew her second on this motion.

At this time Mr. Maxwell asked if anyone wanted to make a motion to reconsider this item.

Mr. Fleck came to the podium and stated that he was never given an opportunity to ask that his request be postponed until a full board was present. Mr. Fleck also stated that he was very clear on Mr. Hutson's position regarding this request and did not need to wait until Mr. Hutson was present.

Mr. Kovacs said that after the motion to postpone failed, another motion was made to approve and his understanding is that under State Statute, a tie vote constitutes a denial. Mr. Kovacs asked if this case was being given special consideration. Ms. Lancaster said that because there was no policy in place regarding reconsideration of this item the Board could hear the item tonight; however, if the vote to reconsider fails, the original tie vote to approve the request would be considered a denial and the request would be finalized.

Mr. Courtney stated that Mr. Hutson would disagree that no policy was in place. Ms. Lancaster said that she agreed with that, but felt that this was a loose end, which needed to be addressed.

Motion by Kovacs
Supported by Fejes

MOVED, to reconsider the motion of Mr. Paul Fleck, 2805 Ranieri, for relief of Section 30.10.05 to construct a patio enclosure addition, which would result in a 26' rear yard setback where 40' is required.

Yeas: 5 – Kovacs, Maxwell, Schultz, Fejes, Gies
Nays: 1 – Courtney

MOTION TO RECONSIDER ITEM CARRIED

ITEM #5 – VARIANCE REQUEST. MR. PAUL FLECK, 2805 RANIERI, for relief of Section 30.10.05 to construct a patio enclosure addition, which would result in a 26' rear yard setback where 40' is required.

ITEM #5 – con't.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a patio enclosure addition on the rear of his home. The site plan submitted indicates a 26' rear yard setback to the proposed patio enclosure. Section 30.10.05 requires a 40' minimum rear yard setback in R-1D Zoning Districts. This item first appeared before this Board at the meeting of October 21, 2003 and was postponed to allow the petitioner the benefit of a full board, as well as for the petitioner to explore the possibility of adding a smaller addition; and to demonstrate to the Board the reasons the addition must be placed in this location.

This item last appeared before this Board at the meeting of December 16, 2003. At that time, motions both to approve the request and to table the item failed on a 3 – 3 tie vote. No motion on this request has been passed by a majority of the Board. In effect, the Board has not taken any action on this request. Therefore, the item was brought back to the Board for final disposition at the meeting of March 16, 2004. This item was postponed at that meeting to allow City Staff to determine appropriate verbiage to deal with tie votes and also so that this request may be heard at this meeting and a final vote taken.

Mr. Fleck said that he want to construct an enclosed patio addition. He had spoken to his neighbors and they do not have any objections to this addition. The land behind this property is owned by Beaumont Hospital and 150' of this property is designated as E-P (Environmentally Protected) zoning, and no construction can be done on it. Mr. Fleck believes he has a very unique situation and does not feel the addition will flow as well if constructed on any other part of the home and would not make sense to put it in another location. Mr. Fejes asked if there were any wetlands on this property and Mr. Fleck said that part of it may be designated wetlands, but he did not think any of the property directly behind him was.

Mr. Fejes asked what this addition would be used for and Mr. Fleck said that he feels the kitchen is too small and they would like to make the home larger. This addition would tie into the adjacent living room. Mr. Fejes said that he feels this is a larger variance request and asked if it had been reduced. Mr. Fleck said that originally his request was for 15' and he had reduced it to 12 ½'.

There are five (5) written approvals on file. There are no written objections on file.

Mr. Courtney stated that in December the question was asked if there was a hardship with the property and Mr. Fleck indicated that there was not. Mr. Courtney then asked if this situation had changed. Mr. Fleck said that it just does not make sense for him to put this addition in any other location, and also he feels that any variance that is allowed is financially related. The Board members did not agree with this evaluation. Mr. Fejes asked why he would not move the addition and Mr. Fleck said that it did not make sense

ITEM #5 – con't.

in the other location because of the roofline. The proposed location would follow the gable of the roof and the patio door would allow egress. The other location would be attached to the bedroom and would require a patio door and just would not make sense.

Mr. Fejes asked how long Mr. Fleck has been in this home and Mr. Fleck indicated it was approximately six (6) years and they plan to stay there.

Mr. Kovacs asked how big the kitchen was and Mr. Fleck said he did not know but thought it was probably 10' x 11'. Mr. Kovacs then asked how large the living room was and what the square footage of the home was. Mr. Fleck said the living room was approximately 23' x 15', with his home having a total square footage of 2300 square feet.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

Mr. Courtney asked if another notice was sent out publishing this item and Mr. Stimac said there was not. Mr. Fleck said he did not think any of his neighbors had objections.

Mr. Fejes said that one of the concerns raised at the earlier meetings was the zoning on the property behind Mr. Fleck. Mr. Fleck said that this zoning would have to be changed by City Council and he did not think the neighbors would allow that.

Mr. Maxwell said that he thought this property was unique and did not think it would have an adverse effect to surrounding property and this proposed addition would fit in very well with this area.

Mr. Kovacs stated that he was against the variance because he thinks this is a large home and this variance does not meet any of the special findings. Mr. Kovacs also said that he does have a buildable area and just does not want to use it. Mr. Kovacs further stated that he thinks this will set a very bad precedent to other homes in this area.

Mr. Courtney said that Mr. Fleck stated that there is no hardship other than financial and this is the reason he is against this request.

Mr. Fejes said he did think this request was very large, but also felt that this property was unique in that it backs up to vacant land.

Motion by Fejes
Supported by Gies

ITEM #5 – con't.

MOVED, to grant Mr. Paul Fleck, 2805 Ranieri, relief of Section 30.10.05 of the ordinance to construct a patio enclosure addition, which would result in a 27.5' rear yard setback where 40' is required.

- Variance is not contrary to public interest.
- Lot is unique because it backs up to E-P (Environmentally Protected) property and it is unlikely that other structures will be built on this property.
- Variance does not permit the establishment of a prohibited use in a zoning district.
- Variance will not have an adverse effect to surrounding property.

A motion was made by Mr. Courtney to postpone this request until the reconsideration issue could be addressed in writing; however, dies to lack of support.

Vote on the motion to approve:

Yeas: 4 – Maxwell, Schultz, Fejes, Gies
Nays: 2 – Courtney, Kovacs

MOTION TO GRANT VARIANCE CARRIED

ITEM #6 - VARIANCE REQUESTED. PETRE GHIRAN, 4155 LIVERNOIS, for relief of the front yard setback to construct an attached garage, which would result in a 12' front setback from the property line along Carter and a 28' front setback from the future right of way line along Livernois. Section 30.10.02 requires a 40' minimum front yard setback from both Livernois and Carter.

Mr. Stimac explained that the petitioner is requesting relief of the Zoning Ordinance to construct an attached garage on an existing residence. This lot is a double front corner lot. As such, Section 30.10.02 requires a 40' front yard setback from both Livernois and Carter. The plans submitted indicate replacing an existing one car garage with a proposed two-car garage resulting in front setbacks of 12' from the property line along Carter and 28' from the future right of way line along Livernois.

This item last appeared before this Board at the meeting of March 20, 2001 and a variance was granted to allow construction of this garage with the stipulation the entrance to the garage would be on the west side of the property with enough room for a vehicle to turn around. The building permit for that addition was not obtained within the one-year time frame and therefore the variance had expired.

Mr. Petre Ghiran was present and stated that at the time he had received approval for this variance, he and his wife were living in Walled Lake and had renters in this home. They have now relocated to Troy and he would like to be able to put up this garage. Mr.

ITEM #6 – con't.

Ghiran also indicated that he had changed the entrance to the garage as this Board had requested.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There is one written objection on file. There are no written approvals on file.

Motion by Courtney
Supported by Gies

MOVED, to grant Petre Ghiran, 4155 Livernois, relief of the front yard setback to construct an attached garage, which would result in a 12' front setback from the property line along Carter and a 28' front setback from the future right of way line along Livernois. Section 30.10.02 requires a 40' minimum front yard setback from both Livernois and Carter.

- Entrance to the garage would be on the west side of the property with enough room for a vehicle to turn around.
- Petitioner will bring in revised plans showing the new configuration of driveway.

Yeas: 5 – Courtney, Fejes, Gies, Kovacs, Maxwell
Nays: 1 – Schultz

MOTION TO GRANT VARIANCE WITH STIPULATION CARRIED

ITEM #7 - VARIANCE REQUESTED. OLAF MALY, OF BEHR AMERICA, INC. 2700 – 2708 DALEY, for relief of the front setback requirement to expand the existing parking lot. Parking is not permitted in the front setback along I-75 in accordance with Section 30.20.09 (L).

Mr. Stimac explained that the petitioner is requesting relief of the front setback requirement to expand the existing parking lot into the front yard along the I-75 freeway. Section 30.20.09 (L) of the Zoning Ordinance does not permit parking in the 50' front setback along a public freeway.

Mr. Olaf Maly was present and stated that this wind tunnel was state of the art and also unique in the world. Mr. Maly believes this is the best wind tunnel on the planet and all of the car manufacturers use this wind tunnel for testing their prototype vehicles. Each manufacturer wants these cars hidden from the public until they are ready to be released. This parking area would keep these vehicles out of sight of I-75 and Rochester Road. Mr. Maly also indicated that they would add more trees and bushes to keep these vehicles out of sight.

ITEM #7 – con't.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are no written approvals or objections on file.

Mr. Fejes asked if the expansion of the parking lot would affect the landscape area. Mr. Stimac stated that they still meet the square foot requirement of the landscape area.

Mr. Stimac asked Mr. Maly if the existing trees shown in the photographs would remain in this area. Mr. Maly stated that not only would they leave the existing trees, but would also like to add more trees in this area.

Mr. Courtney asked if there was any other place to store these vehicles indoors. Mr. Maly said that they did not have the extra space and did not think they would be allowed to build any additional buildings. Cars can be stored temporarily in the wind tunnel, but sometimes they have 8 to 10 cars to be prepped. Mr. Maly also said that this wind tunnel has been booked for use by the car manufacturers for the next one and one-half years without interruption.

Motion by Kovacs
Supported by Courtney

Moved, to grant Olaf Maly, of Behr America, Inc., 2700-2708 Daley, relief of the front setback requirement to expand the existing parking lot into the front yard along the I-75 freeway.

- Variance is not contrary to public interest.
- Variance will not permit the establishment of a prohibited use in a zoning district.
- Variance will not have an adverse effect to surrounding property.
- Variance relates only to the property described in this application.
- Variance applies to this property only.

Yeas: 6 – Courtney, Fejes, Gies, Kovacs, Maxwell Schultz

MOTION TO GRANT VARIANCE CARRIED

ITEM #8 – VARIANCE REQUESTED. MIKE JOHNSON, REPRESENTING MR. & MRS. WILLIAM SIRCY, 412 HICKORY (PROPOSED ADDRESS), for relief of the minimum lot width required to split a parcel to construct a new home, which would be constructed on a lot that is 59' wide, where Section 30.10.06 requires a 60' minimum lot width.

Mr. Stimac explained that the petitioner is requesting relief of the Zoning Ordinance to construct a new home. This property is in single ownership with the adjacent property

ITEM #8 – con't.

at 404 Hickory. Section 40.50.02 requires that adjacent, single ownership parcels that do not meet lot width or area be considered an undivided parcel. The site plan submitted indicates splitting the existing 118' wide parcel into two, 59' wide parcels and building a new home on the vacant portion. Section 30.10.06 requires a 60' minimum lot width in the R-1E Zoning District.

Mr. Johnson was present and stated that the Sircys purchased this property back in 1955 or 1956 and the Ordinance was changed in 1957. This neighborhood has had a large number of variances granted regarding the change in lot size. This property meets all the requirements required by the Building Code, with the exception of the lot width.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There is one (1) written approval on file. There are no written objections on file.

Mr. Courtney asked Mr. Johnson was his relation was to Mr. & Mrs. Sircy. Mr. Johnson indicated that he was a builder and wished to develop this property. Mr. Johnson also said that he grew up in this area and believes that this new construction would add to the area.

Mr. Kovacs asked what the minimum lot area was in the R-1E zoning classification and Mr. Stimac said that it is 7500 square feet and although these lots are narrow they would meet the requirement of the lot area. Each lot would be approximately 7670 square feet. Mr. Kovacs asked what the buildable area is and Mr. Stimac stated that in R-1E zoning, the side yard setback is a minimum of 5' and a total of 15'; and on a 59' wide lot you would have 44' of buildable width. The front yard setback would be 25' and rear yard setback would be 35', therefore basically a 44' x 70' buildable envelope would be allowed.

Motion by Kovacs
Supported by Gies

MOVED, to grant Mike Johnson, representing Mr. & Mrs. William Sircy, 412 Hickory (proposed address), for relief of the minimum lot width required to split a parcel of land to construct a new home, which would be constructed on a lot that is 59' wide, where Section 30.10.06 of the Ordinance requires a 60' minimum lot width.

- Variance is not contrary to public interest.
- Literal enforcement of the Ordinance precludes full enjoyment of the permitted use and makes conformance unnecessarily burdensome.

Yeas: 6 – Courtney, Fejes, Gies, Kovacs, Maxwell, Schultz

ITEM #8 – con't.**MOTION TO GRANT VARIANCE CARRIED**

ITEM #9 – VARIANCE REQUESTED. JAMES YAREMA, 345 MINNESOTA (PROPOSED ADDRESS), for relief of the Ordinance regarding lot coverage to construct an addition to an existing industrial building. The proposed addition would result in lot coverage of 51%, and Section 30.20.09 of the Zoning Ordinance limits the lot coverage by building on an individual site in the M-1 (Light Industrial) Zoning District to not more than 40%.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance regarding lot coverage to construct an addition to an existing industrial building. The petitioner owns a number of buildings on the west and east sides of Minnesota. The buildings on the property on the west side of Minnesota with this addition would total 64,316 square feet of building on a site that is 126,214 square feet. This results in lot coverage of 51%. When the total area of all of these buildings including the proposed addition is reviewed, the result is lot coverage of 109,456 square feet on a site that is 231,214 square feet. The resultant lot coverage is 47% for the combined sites. Section 30.20.09 of the Zoning Ordinance limits the lot coverage by building on an individual site in the M-1 (Light Industrial) Zoning District to not more than 40%. In order for the petitioner to gain approval for the addition, a parking variance for 33 spaces was required and granted by City Council at a hearing on April 19, 2004.

Mr. Tom Sawyer, representing Mr. Yarema was present and stated that this business has been in Troy since 1958 and Mr. Yarema has other buildings located on Stephenson Highway and Maplelawn and employs approximately 500 people. Four years ago they had to make a choice whether to put their headquarters on Minnesota or to move to another location. They chose to put their Corporate Headquarters on Minnesota and improved the area on Minnesota. They wish to add a 10,000 square foot addition in order to modify their stamping press operation and the only area available to them is on the north side of this building. This addition will allow them to have a continuous stamping operation and help to make them succeed in a competitive market. Two variances were required one for parking and the one tonight for the coverage of lot area. Mr. Sawyer stated that City Council voted unanimously to grant the parking variance.

Mr. Sawyer went on to say that he does not think this variance is in any way contrary to public interest and intend to purchase other properties in this area as they become available. Mr. Sawyer also said that the addition would be in the interest of public safety and welfare and would not adversely effect any of the property in the surrounding area. Mr. Sawyer further stated that he believes literal enforcement of the Ordinance would be extremely burdensome.

Mr. Courtney stated that the only written comment staff had received voiced a concern regarding the vibrations felt by another business nearby from the existing machinery.

ITEM #9 – con't.

Mr. Sawyer said that this person had been at the City Council meeting the night before and after finding out what Mr. Yarema is proposing withdrew their objection because they were not adding any additional presses.

Mr. Yarema was present and stated that the gentleman who had expressed concern about the vibrations leases property to the north of Mr. Yarema. He went on to say that he had offered to purchase this building and build another building for this person, but was unable to purchase the property. Mr. Yarema indicated that he is not doing anything different than he has in the past and he is not planning to add any more presses at this time. The addition is needed in order to lengthen the press line in order to keep the material moving continuously, rather than have a shut down period. If any properties were to become available, Mr. Yarema would probably purchase them in order to expand his business and plans to remain in Troy.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There is one written objection on file. There are no written approvals on file.

Mr. Schultz said that as a representative of the Planning Commission, he is concerned about the amount of vacant space in the M-1 (Light Industrial) zoning district. Mr. Schultz said that the Planning Commission would support anyone who wants to expand in the M-1 zoning district. Mr. Schultz asked if Chief Nelson had reviewed the site plan regarding this expansion to determine if there was acceptable access. Mr. Stimac indicated that the site plan has not been presented to the Fire Department at this time. Mr. Courtney asked when the Fire Department would look at this site plan. Mr. Stimac said that they had a meeting approximately a year ago but could not remember if the Fire Department was represented at that time, and the Fire Department would be able to look at the proposed plan at the time of site plan submittal.

Motion by Kovacs
Supported by Schultz

MOVED, to grant James Yarema, 345 Minnesota (proposed address), relief of the Ordinance regarding lot coverage to construct an addition to an existing industrial building. The proposed addition would result in lot coverage of 51% where Section 30.20.09 of the Zoning Ordinance limits the lot coverage by building on an individual site in the M-1 (Light Industrial) Zoning District to not more than 40%.

- Variance is not contrary to public interest.
- Literal enforcement of the Ordinance would be unnecessarily burdensome.
- Variance will be in the best interest of the City of Troy.

Yeas: 6 – Fejes, Gies, Kovacs, Maxwell, Schultz, Courtney

ITEM #9 – con't.**MOTION TO GRANT VARIANCE CARRIED**

ITEM #10 – VARIANCE REQUESTED. MR. & MRS. WALTERS, 1184 HARTLAND, for relief of the Zoning Ordinance to split a parcel of land in the R-1E Zoning district into four parcels, which would result in less than the required lot area. Section 30.10.05 of the Ordinance requires 7,500 square feet for each lot in the R-1E Zoning District, and the proposed lot split would result in four lots with areas between 6,292 square feet and 6,720 square feet.

Mr. Stimac explained that the petitioners are requesting relief of the Ordinance to split a parcel of land in the R-1E Zoning District into four parcels less than the required lot area. The property in question is made up of six 40' wide platted lots. Three of the lots front on Hartland and three of the lots front on what is called Daley. The petitioner proposes to demolish the existing home and split the property into four lots, two fronting on each street. The resultant parcels would range between 6,292 square feet up to 6,720 square feet. Section 30.10.06 of the Ordinance requires 7,500 square feet for each lot in the R-1E Zoning District.

Mr. Maxwell asked for clarification of this parcel. Mr. Stimac stated that when these lots were originally platted they were platted as three (3) different lots, which are 40' wide and make up the northern portion of the property; and the same formula applies to the parcel on the south, which is also made up of three (3) separate lots. If these lots are divided into four (4) parcels they would each be deficient in lot area.

Mr. Courtney asked if this property could be divided into three conforming parcels. Mr. Stimac said that the property right now is two (2) conforming lots, and you could split off of the centerline and create two on one side and one on the other. These lots could also be turned to face Daley to the east and be split into three (3) conforming lots.

Mr. Gary Abitheira representing Mr. & Mrs. Walters was present and stated that the Walters had purchased this property in 1953 and originally was considered to be six (6) buildable lots. In 1957 the zoning was changed and then could build on only two of the lots or as indicated by Mr. Stimac three of the lots. Mr. Abitheira indicated that if these lots were split into three separate lot, the utility easements would have to be moved and this could run into thousands of dollars. The Walters had approached Mr. Abitheira and asked him to help them by building on these lots as well as building them a new home. Mr. Abitheira feels that the hardship goes back to when the property was originally platted because depth was not an issue at that time, and the proposed homes will meet all the building code requirements regarding setbacks. Other homes in this area are on smaller lots and Mr. Abitheira does not feel the shortage in the lot area would even be noticeable.

Mr. Courtney asked what the problem would be if the Edison lines remained in place and splitting the property into three (3) buildable lots. Mr. Abitheira explained that this

ITEM #10 – con't.

property was purchased with the understanding that they had six (6) lots and wanted this property to help them with their retirement. One of the lots facing Daley would be very long and narrow and would have the utility easement in their back yard. Mr. Abitheira further explained that in order for the Walters to have the money to build a new home, they need to have this parcel split into four lots. The existing home is very old and has stairs as well as narrow doorways and a new ranch home would be easier for them to get around in.

Mr. Kovacs asked how many homes in this area are built on 40' lots. Mr. Stimac explained that there is a variation in the lot sizes from 40' to 120'.

The Chairman opened the Public Hearing.

Mr. Allen Walters, son of Mr. & Mrs. Walters was present, and stated that there is a variety of lot sizes in this area. Mr. Walters is in favor of this request and believes that there are a number of lots that are much smaller than this split would be.

No one else wished to be heard and the Public Hearing was closed.

There are two (2) written objections on file. There is one (1) written approval on file.

Mr. Courtney stated that there are a number of lots that could come in with the same request.

Mr. Kovacs stated that he does not like the fact that in 1953 there were six (6) buildable lots, and once the zoning had changed they were limited to three (3) buildable lots. Mr. Kovacs said that the property owners had no way of knowing that the law would change and therefore feels that this is a definite hardship.

Mr. Schultz asked if the proposed northeast and southeast lots would be considered double front corner lots. Mr. Stimac explained that they would not be double front corner lots because there are no houses that front on Daley in that same block.

Mr. Fejes asked the petitioner if this request was denied, would the owner then split the lots into three (3) lots. Mrs. Walters came to the podium and stated that her husband is very ill and needs to sell this property as soon as possible. Mr. Maxwell expressed the Boards sympathy to the petitioner.

Motion by Kovacs
Supported by Gies

ITEM #10 – con't.

MOVED, to grant Mr. & Mrs. Walters, 1184 Hartland, relief of the Zoning Ordinance to split a parcel of land in the R-1E Zoning District into four parcels, which would result in less than the required lot area. Section 30.10.05 of the Ordinance requires 7,500 square feet for each lot in this Zoning District, and the proposed lot split would result in four lots with areas between 6,292 square feet and 6,720 square feet.

- Variance would not be contrary to public interest.
- Property was originally purchased with the understanding that it was six buildable lots.
- Parcels will result in lots that are in keeping with the area and are very buildable.
- Variance will not establish a prohibited use in a Zoning District.

Yeas: 4 – Gies, Kovacs, Maxwell, Schultz

Nays: 2 – Courtney, Fejes

MOTION TO GRANT VARIANCE CARRIED

ITEM #11 – VARIANCE REQUESTED. MR. & MRS. CRISTIAN COROIU, 331 COLEBROOK, for relief of the Ordinance to expand a legal non-conforming structure. The proposed second floor addition continues the existing 33.4' rear yard setback where Section 30.10.04 requires a 40' rear yard setback. Section 40.50.04 prohibits expansions of non-conforming structures in a way that increases the non-conformity.

Mr. Stimac explained that the petitioners are requesting relief of the Ordinance to construct a second floor addition. Section 30.10.04 requires a 40' minimum rear yard setback in the R-1C Zoning District. The mortgage survey submitted indicates the existing one and one-half story house has a 33.4' rear yard setback. Based upon the age of the home, it is classified as a legal non-conforming structure. The proposed second floor expansion would continue the 33.4' non-conforming rear setback. Section 40.50.04 prohibits expansions of non-conforming structures in a way that increases the non-conformity.

Mrs. Nicole Coroiu was present and stated that this addition would go up and not any farther into the rear yard setback. Ms. Coroiu said that they would like to add another bedroom as their home is quite small.

The Chairman opened the Public Hearing.

Mr. Alan Sheets, 328 Colebrook, was present and stated that he lives across the street from this property and is in favor of this request. Mr. Sheets stated that the petitioners are consistently upgrading this property and believes this would be a valuable addition and would bring in more in line with the surrounding properties.

No one else wished to be heard and the Public Hearing was closed.

ITEM #11 – con't.

There are no written approvals or objections on file.

Motion by Fejes

Supported by Courtney

MOVED, to grant Mr. & Mrs. Cristian Coroiu, 331 Colebrook, relief of the Ordinance to expand a legal non-conforming structure. The proposed second floor addition continues the existing 33.4' rear yard setback where Section 30.10.04 requires a 40' rear yard setback.

- Variance will not decrease the non-conforming rear yard setback.
- Variance is not contrary to public interest.
- Variance will not establish a prohibited use in a Zoning District.
- Variance will bring this home in line with other properties in the area.

Yeas: 6 - Kovacs, Maxwell, Schultz, Courtney, Fejes, Gies

MOTION TO GRANT VARIANCE CARRIED

ITEM #12 – VARIANCE REQUESTED. MR. & MRS. PRADEEP, 3839 WAYFARER, for relief of the rear yard setback to construct additions to their home. These proposed additions would result in 35.23' rear yard setbacks where Section 30.10.04 requires 40' minimum rear yard setbacks in R-1C Zoned Districts.

Mr. Stimac explained that the petitioners are requesting relief of the rear yard setback to construct additions to their home. The site plan submitted indicates separate dining room and master bedroom additions on the rear of the home with proposed 35.23' rear yard setbacks to each one. Section 30.10.04 requires 40' minimum rear yard setbacks in R-1C Zoned Districts.

Mr. & Mrs. Pradeep were present and stated that they have lived in Troy since 1989 and their family is growing and would like to stay in Troy. They would like the addition as Mrs. Pradeep's mother has moved in with them and they need the extra space to make it more comfortable for themselves and her. They wish to extend the master bedroom and extend the dining room and feel this is the best location for these additions. Mr. Pradeep stated that he had spoken to his neighbors and they did not object to these proposed additions.

Mr. Courtney asked if they were planning to make this a two-family home. Mrs. Pradeep stated only her mother was living with them.

The Chairman opened the Public Hearing.

ITEM #12 – con't.

Mr. Tom Sep, 3847 Wayfarer, was present and stated that his property is to the north of this home. He believes these additions would be unobtrusive and the larger dining room would benefit the family and would also replace an existing patio, which is in some disrepair. Mr. Sep also indicated that in the past he had been on the Architectural Committee in the past and felt they would accept this change to the home.

No one else wished to be heard and the Public Hearing was closed.

Mr. Courtney asked the petitioner if their building plans had been presented to the Architectural Committee as is required by the Home Association By-Laws. Mr. Courtney pointed out that there are deed restricts, which require approval by the Architectural Committee. Mr. Pradeep stated that he was aware of the Charter and Mr. Maxwell gave them a copy of the deed restrictions, which Building Department staff had received in the mail.

Mrs. Gies asked what would happen if a variance was granted and the Association did not approve of this proposed plan. Mr. Stimac stated that Zoning Ordinance could be considered "criminal law" and the deed restrictions imposed on a property owner would be construed as "civil law". The Association could take them to court and sue them civilly if they did not have approval. Mr. Stimac also said that, in total, they need to get approvals from this Board as well as the Architectural Committee of the subdivision.

Motion by Gies
Supported by Kovacs

MOVED, to postpone the request of Mr. & Mrs. Pradeep, 3839 Wayfarer, until the meeting of May 18, 2004, for relief of the rear yard setback to construct additions to their home. These proposed additions would result in 35.23' rear yard setbacks where Section 30.10.04 requires a 40' minimum rear yard setbacks in R-1C Zoned Districts.

Mr. Fejes asked what would happen if a variance was granted and the Architectural Committee did not give approval. Mr. Stimac explained that if a variance was granted, it would be valid for a period of one-year. If a Building Permit was not obtained during that time frame, the variance would lapse and the petitioner would be required to come back to the Board. Mr. Kovacs stated that with that understanding he would be comfortable voting on the issue this evening and withdrew his support to postpone this request.

Mr. Courtney said that he would like to have the input of the Architectural Committee and supported Ms. Gies motion to postpone action on this item.

- Postponement would allow the petitioner to meet with the Architectural Committee and bring their recommendations back to this Board.

ITEM #12 – con't.


Yeas: 4 – Maxwell, Schultz, Courtney, Gies
Nays: 2 – Kovacs, Fejes

MOTION TO POSTPONE THIS REQUEST UNTIL THE MEETING OF MAY 18, 2004
CARRIED

Mr. Stimac informed the Board that both Mr. Courtney and Mrs. Gies had been reappointed to the Board of Zoning Appeals. Appointments for Chairperson and Vice-Chairperson will be done at the meeting of May 18, 2004.

Ms. Gies will not be present at the meeting of May 18, 2004.

The Board of Zoning Appeals meeting adjourned at 9:30 P.M.


Mark Maxwell, Chairman


Pamela Pasternak, Recording Secretary